



Sen. William Delgado

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LRB098 15075 NHT 58512 a

1 AMENDMENT TO SENATE BILL 3092

2 AMENDMENT NO. _____. Amend Senate Bill 3092 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The P-20 Longitudinal Education Data System Act
5 is amended by adding Section 32 as follows:

6 (105 ILCS 13/32 new)

7 Sec. 32. Personally identifiable information limitations.

8 (a) In this Section:

9 "Education records" has the meaning ascribed to that term
10 in 34 CFR 99.3.

11 "Organization" means not-for-profit organizations, think
12 tanks, or other organizations conducting research studies.

13 "Personally identifiable information" means (i) any
14 personally identifiable information under the federal Family
15 Educational Rights Act of 1974 (FERPA), other than "directory
16 information" as that term is defined in Section 99.3 of the

1 federal regulations implementing FERPA (34 CFR 99.3), and (ii)
2 the personally identifiable information of teachers, other
3 educators, and school administrators, other than publicly
4 available, school-related information such as the name, school
5 location, and grade levels or subjects taught.

6 (b) If an audit or evaluation or a compliance or
7 enforcement activity in connection with legal requirements
8 that relate to State-supported or school district-supported
9 educational programs requires or is used as the basis for
10 granting access to personally identifiable information, the
11 State Board or a school shall designate parties only under
12 their direct control to act as authorized representatives to
13 conduct the audit, evaluation, or activity.

14 (c) The State Board or schools may not disclose any
15 personally identifiable information, including personally
16 identifiable information from education records of students,
17 to a contractor, consultant, or other party to whom the State
18 Board or school has outsourced services or functions without
19 providing notice to parents, guardians, and eligible students
20 by posting the intent to disclose the information on the
21 Internet website of the school or State Board at least 30 days
22 in advance or as soon as practicable, unless that outside
23 party:

24 (1) performs an institutional service or function for
25 which the State Board or the school would otherwise use
26 employees;

1 (2) is under the direct control of the State Board or
2 the school with respect to the use and maintenance of
3 education records;

4 (3) limits internal access to education records to
5 those individuals who are determined to have legitimate
6 educational interests;

7 (4) does not use the education records for any purposes
8 other than those authorized in its contract;

9 (5) does not disclose any personally identifiable
10 information to any other party (i) without the prior
11 notification to the eligible student, parent, or guardian
12 or (ii) unless required by law and the party provides a
13 notice of the disclosure to the State Board or school board
14 that provided the information no later than the time the
15 information is disclosed, to the extent allowed by law or
16 by the terms of a court order;

17 (6) maintains reasonable administrative, technical,
18 and physical safeguards to protect the security,
19 confidentiality, and integrity of personally identifiable
20 information in its custody and conducts regular security
21 audits to confirm the efficacy of those safeguards;

22 (7) uses appropriate encryption technologies to
23 protect data while in motion or in its custody from
24 unauthorized disclosure;

25 (8) has sufficient administrative and technical
26 procedures to monitor continuously the security of

1 personally identifiable information in its custody;

2 (9) maintains a breach remediation plan prior to
3 initial receipts of the personally identifiable
4 information and reports breaches as specified by the
5 Personal Information Protection Act;

6 (10) reports all actual security breaches to the State
7 Board or the school that provided personally identifiable
8 information and education records as soon as possible, but
9 no later than 72 hours after an actual breach was known or
10 in the most expedient amount of time possible under the
11 circumstances;

12 (11) agrees, in the event of a security breach or an
13 unauthorized disclosure of personally identifiable
14 information, to pay all costs and liabilities incurred by
15 the State Board or school related to the security breach or
16 unauthorized disclosure, including without limitation the
17 costs of responding to inquiries about the security breach
18 or unauthorized disclosure, of notifying the subjects of
19 personally identifiable information about the breach, of
20 mitigating the effects of the breach for the subjects of
21 personally identifiable information, and of investigating
22 the cause or consequences of the security breach or
23 unauthorized disclosure; and

24 (12) destroys or returns to the State Board or school
25 all personally identifiable information in its custody
26 upon request and at the termination of the contract.

1 (d) The State Board or schools may disclose personally
2 identifiable information from an education record of a student
3 without the consent of the eligible student, parent, or
4 guardian to a party conducting studies for or on behalf of the
5 State Board or school to (i) develop, validate, or administer
6 predictive tests, (ii) administer student aid programs, or
7 (iii) improve instruction, provided that the outside party
8 conducting the study meets all of the requirements for
9 contractors set forth in subsection (c) of this Section.

10 (d-5) The State Board or schools may disclose personally
11 identifiable information from an education record of a student
12 to researchers at an organization or accredited post-secondary
13 educational institution conducting research pursuant to a
14 specific, written agreement with the school or State Board and
15 in accordance with the federal Family Educational Rights and
16 Privacy Act of 1974, provided that:

17 (1) the nature of the research is first publicly
18 disclosed to parents, guardians, and eligible students on
19 the Internet website of the school or State Board at least
20 30 days in advance of the research being conducted or as
21 soon as practicable;

22 (2) the organization or institution and the school or
23 State Board enter into a data use agreement that complies
24 with the federal Family Educational Rights and Privacy Act
25 of 1974 and its accompanying rules and includes, at a
26 minimum, the following:

1 (A) the purpose, scope, and duration of the study
2 or studies and the information to be disclosed;

3 (B) provisions requiring the organization or
4 institution to use personally identifiable information
5 from school student records only to meet the purpose or
6 purposes of the study as stated in the written
7 agreement;

8 (C) provisions requiring the organization or
9 institution to conduct the study in a manner that does
10 not permit personal identification of parents or
11 guardians and students by anyone other than
12 representatives of the organization with legitimate
13 interests;

14 (D) provisions requiring the organization or
15 institution to destroy all personally identifiable
16 information when the information is no longer needed
17 for the purposes for which the study was conducted and
18 specifying the time period in which the information
19 must be destroyed;

20 (E) provisions requiring the organization or
21 institution to certify that it has the capacity to and
22 will restrict access to the school student records and
23 maintain the security of electronic information; and

24 (F) provisions requiring the organization or
25 institution to develop, implement, maintain, and use
26 appropriate administrative, technical, and physical

1 security measures to preserve the confidentiality,
2 integrity, and availability of all school student
3 records; and

4 (3) the organization or institution uses personally
5 identifiable information from school student records only
6 to meet the purpose or purposes of the study as stated in
7 the written agreement.

8 For purposes of this subsection (d-5), any information by
9 which a student may be individually or personally identified
10 may only be released, transferred, disclosed, or otherwise
11 disseminated as contemplated by the agreement between the
12 parties. The school student records must be redacted prior to
13 analysis by the organization or institution. Any personally
14 identifiable information used to link data sets must be stored
15 in a secure data file or location outside of the secure data
16 storage where redacted information from the school regarding
17 student records is stored. The organization or institution
18 shall implement and adhere to policies and procedures that
19 restrict access to information by which a student may be
20 individually or personally identified. The organization or
21 institution shall designate an individual to act as the
22 custodian of the personally identifiable information who is
23 responsible for restricting access to that information.

24 Nothing in this subsection (d-5) prohibits or limits the
25 ability of the State Board or any school to provide personally
26 identifiable information about individual students to a school

1 official, organization, or institution for the purposes of
2 developing, administering, scoring, or interpreting results of
3 student assessments or predictive tests if those assessments or
4 tests require individualized development or administration
5 based on the needs of individual students.

6 (e) The State Board or schools may not disclose any
7 personally identifiable information, including personally
8 identifiable information from education records of students,
9 without the written consent of eligible students, parents, or
10 guardians to any party for a commercial use, including without
11 limitation marketing products or services, compiling lists for
12 sale or rental, developing products or services, or creating
13 individual, household, or group profiles, nor may such
14 disclosure be made for the provision of services other than
15 contracting, studies, and audits or evaluations as authorized
16 and limited by subsections (c), (d), and (d-5) of this Section.

17 (f) The State Board or schools may not, directly or through
18 contracts with outside parties, maintain personally
19 identifiable information, including personally identifiable
20 information from education records of students, without the
21 proper notification to eligible students, parents, or
22 guardians, unless the maintenance of the information is:

23 (1) explicitly mandated in federal or State statute;

24 (2) administratively required for the proper
25 performance of their duties under the law and is relevant
26 to and necessary for the delivery of services; or

1 (3) designed to support a study of students or former
2 students.

3 (g) The State Board and schools shall publicly and
4 conspicuously disclose on their Internet websites and through
5 annual electronic notification to the chairperson of the House
6 of Representatives Elementary & Secondary Education Committee
7 and the chairperson of the Senate Education Committee the
8 existence and character of any personally identifiable
9 information that they, directly or through contracts with
10 outside parties, maintain. The disclosure and notification
11 shall include:

12 (1) the name and location of the data repository where
13 the information is maintained;

14 (2) the legal authority that authorizes the
15 establishment and existence of the data repository;

16 (3) the principal purpose or purposes for which the
17 information is intended to be used;

18 (4) the categories of individuals on whom records are
19 maintained in the data repository;

20 (5) the categories of records maintained in the data
21 repository;

22 (6) each expected disclosure of the records contained
23 in the data repository, including the categories of
24 recipients and the purpose of each disclosure;

25 (7) the policies and practices of the State Board or
26 school regarding storage, retrievability, access controls,

1 retention, and disposal of the records;

2 (8) the title and business address of the State Board
3 or school official who is responsible for the data
4 repository and the name and business address of any
5 contractor or other outside party maintaining the data
6 repository for or on behalf of the State Board or school;

7 (9) the procedures whereby eligible students, parents,
8 or guardians can be notified at their request if the data
9 repository contains a record pertaining to the student,
10 parent, or guardian;

11 (10) the procedures whereby eligible students,
12 parents, or guardians can be notified at their request on
13 how to gain access to any record pertaining to the student,
14 parent, or guardian contained in the data repository and
15 how they can contest its content; and

16 (11) the categories of sources of records in the data
17 repository.

18 (h) The State Board and schools may not append education
19 records with personally identifiable information obtained from
20 other federal or State agencies through data matches without
21 the proper notification to eligible students, parents, or
22 guardians unless the data matches are:

23 (1) explicitly mandated in federal or State statute; or

24 (2) administratively required for the proper
25 performance of their duties under the law and are relevant
26 to and necessary for the delivery of services.

1 (i) Each violation of this Section by an organization or
2 entity that is not the State Board or a school is subject to a
3 civil penalty of up to \$1,000 for a first violation, up to
4 \$5,000 for a second violation, and up to \$10,000 for a third or
5 subsequent violation. Each violation involving a different
6 individual's personally identifiable information shall be
7 considered a separate violation for purposes of civil
8 penalties.

9 (j) The Attorney General shall have the authority to
10 enforce compliance with this Section by investigation and
11 subsequent commencement of a civil action to seek civil
12 penalties for violations of this Section and to seek
13 appropriate injunctive relief, including without limitation a
14 prohibition on obtaining personally identifiable information
15 for an appropriate time period. In carrying out an
16 investigation and in maintaining a civil action, the Attorney
17 General or any deputy or assistant Attorney General is
18 authorized to subpoena witnesses, compel their attendance,
19 examine them under oath, and require that any books, records,
20 documents, papers, or electronic records relevant or material
21 to the inquiry be turned over for inspection, examination, or
22 audit, pursuant to the Civil Practice Law and rules. Subpoenas
23 issued pursuant to this subsection (j) may be enforced pursuant
24 to the Civil Practice Law and rules.

25 (k) Nothing contained in this Section shall be construed as
26 creating a private right of action against the State Board or a

1 school.

2 (1) Nothing in this Section shall limit the administrative
3 use of personally identifiable information by a person acting
4 exclusively in the person's capacity as an employee of a
5 school, this State, a court, or the federal government that is
6 otherwise required by law.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.".